COMMAND INFLUENCES

JOINT LAW CENTER
MCAS NEW RIVER
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MAIN TOPICS:

- Define Lawful and Unlawful Command
- Lawful Command, Control, and Influence
- Unlawful Command Influence

Lawful or Unlawful?

LAWFUL:

- **Balance between leadership and command**
- **Substantial amount of Command control over military justice proceedings**
- **UCMJ seeks fairness while preserving the Code**

UNLAWFUL:

- **Occurs when senior personnel of a command, influence any or some part of a courts-martial**
- **Jeopardizes validity of judicial process**
- **Undermines morale, respect and public confidence in the military**

Lawful Command, Control, and Influence (cont.)

A Commander may:

- Personally dispose of a case at authorized level (i.e. Special courts-martial)
- Send a case to a lower level commander for that subordinate's independent action (i.e. Summary courts-martial or NJP)
- Send a case to higher disposition with recommendation for disposition (i.e. General courts-martial)

Lawful Command, Control, and Influence (cont.)

- Withdraw subordinate court-martial CA in whole or part for particular classes of categories of cases
- Order charges pending at a lower level up for further consideration, to include referral
- Mentor and train subordinates in military justice – but must be aware of members misinterpreting the commander's intent

Unlawful Command Influence

A Commander may not:

- Order a subordinate to dispose of a case in a certain way
- Select or remove courts-martial members in order to obtain a particular result in a particular trial (Article 25, UCMJ)
- Pressure the Military Judge or courts members to arrive at a particular decision (to include harassing Defense Counsel)

Unlawful Command Influence

- Intimidate or discourage witnesses from testifying or retaliate against a witness
- Criticize military judges, court members, witnesses, or defense counsels in a way that would influence them in future cases
- Consider or evaluate, in a fitness report, the court-martial performance of any court member due to outcome of proceeding

Unlawful Command Influence

- Commanders should **not** have an inflexible policy on the disposition of a court-martial case or the punishment to be imposed

- A Commander who is an “accuser” may not act as a convening authority

- Commanders are “accusers” when he/she formally signs charges on a charge sheet; directs that charges be signed and sworn to by another; or has an interest, other than an official interest, in the prosecution of the accused

REFERENCE

MCO P5800.16A
W/CH 1-4

QUESTIONS?